

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

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JAMES I. DALE, :

CIV. 04-4153

Plaintiff, :

vs. :

DARYL SLYKHUIS, Interim Warden, in :

his individual and official capacities; :

KELLY DAUGHTERS, Counselor, in his :

individual capacity; and MARK LEONARD, :

in his individual capacity, :

Defendants. :

:

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**MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, Defendants Daryl Slykhuis, Kelly Daughters, and Mark Leonard move for summary judgment based on Dale's failure to exhaust his administrative remedies, on the merits, and based on qualified immunity. This motion is based on a separate supporting brief, the pleadings in this case, a statement of undisputed material facts, and affidavits of Robyn Meinerts, Daryl Slykhuis, and Elizabeth Martin (Doc. 46).

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Dated this 21st day of November, 2006.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on the 21st day of November, 2006, I sent to:

Mr. James I. Dale, #39050
South Dakota State Penitentiary
P.O. Box 5911
Sioux Falls, SD 57117-5911

by United States first-class mail, postage prepaid, a true and correct copy of the
foregoing Motion for Summary Judgment.

/s/ James E. Moore
One of the Attorneys for Defendants